IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8174 OF 1990

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

SHRI D B BHARWAD
VERSUS
STATE OF GUJARAT & ORS.

Appearance:
MR KETAN DAVE FOR PETITIONER
MR PREMAL JOSHI FOR RESPONDENT NO.1
NONE PRESENT FOR RESPONDENT NO.2
MR KJ BRAHMBHATT FOR RESPONDENTS NO.3, 4 & 5

Coram: MR.JUSTICE S.K. Keshote,J
Date of Decision: 08/12/2000

C.A.V. JUDGMENT

#. Heard the learned counsel for the petitioner.

#. The petitioner is praying for direction to the Government and the University to ensure compliance of reservation provision in the colleges and Institute run by the respondent-Society. Next prayer has been made to direct the respondent-Society and the respondent Institute/ college to appoint the petitioner as physical training instructor. As usual, prayer has also been made for grant of interim relief.

#. The matter was admitted by the court on 23.1.91 and this court has ordered that the appointment will be made subject to the result of the petition.

#. The facts of the case in brief are that the petitioner claims himself to be a person belonging to the category of S.E.B.C. The Ahmedabad Education Society issued an advertisement inviting applications for the post of P.T. Instructor at the M.G.Science Institute, Ahmedabad, run by it. This advertisement appeared in the issue of "Gujarat Samachar" daily dated 20th July, 1990. In response to this advertisement, the petitioner submitted his application. It is the case of petitioner that applications were invited only from SC/ ST/ SEBC candidates. Another advertisement for the post of P.T.Instructor was issued which was published in "Times of India" daily on 28th July, 1990 and in "Gujarat Samachar" on 27th July, 1990. The petitioner sent a letter to the respondent-Society pointing out that he had already applied for the post of P.T.Instructor in response to the first advertisement and requested that his application may be considered against this second advertisement. The petitioner was called for personal interview before the Selection Committee on 10.10.90. The petitioner stated in paragraph-11 that he learnt from reliable sources that the selection committee had recommended a panel consisting of three names wherein the petitioner's name figured at rank No.2 while one Shri D.G.Chaudhary was assigned rank No.1 and the respondent-Society appears to have decided to appoint said Shri Choudhary on the post of P.T.Instructor. It is stated that so far the petitioner is aware, said Shri Choudhary is not a backward class candidate.

#. Though very artistically the prayer has been made in the special civil application, if we go by substance of the matter, it is a clear case where the petitioner is challenging selection of Shri D.G.Choudhary on the post of P.T.Instructor. It is true that this court while

admitting the petition has ordered that whatever appointment made on the post of P.T.Instructor shall be subject to decision in this petition, but the person who has been appointed on the post is necessary party and he has to be impleaded as a party. If behind the back of that person any decision is given in favour of petitioner then certainly it will be a decision contrary to the basic principles of fair play and natural justice. Merely because this court has ordered that the appointment shall be subject to the judgment in this writ petition, that person who has been selected and by now would have been appointed also does not become irrelevant and unconcerned person. If ultimately, relief as prayed for is granted, the appointment of that person has to be recalled by the society and the petitioner has to be given appointment. Moreover, when one post was there on which another person has been selected and by now he would have also been appointed as it is not the case of the petitioner that Shri Choudhary has not been given appointment so far, naturally to give appointment to the petitioner if it is ordered by the court then his services are to be terminated and such decision if given by the court in the absence of that person, certainly is not just and reasonable decision and this court will not declare the selection of that person to be illegal without giving an opportunity of hearing to him. Mr.Choudhary was necessary party to this petition. Even if this court has passed the order, as stated earlier, after his appointment on the post, the petitioner should have impleaded him as a party. That has not been done. Otherwise also, on merits, I do not find any case in favour of petitioner. It is difficult to accept in the facts stated in the petition that the Institution is not adhering to reservation policy. The petitioner has made this grievance only on the basis of the fact that in earlier advertisement, the post has been reserved for SC/ ST/ SEBC but he lost sight of the fact that there are all possibilities that already reservation quota would have been filled in by the Society. Otherwise also, the petitioner cannot make any grievance for the reason that the said post was reserved for SC/ ST/ SEBC and not only for SEBC.

#. There is another ground on which this petition deserves to be dismissed. The second advertisement is very clear and the petitioner has appeared in response to that advertisement. In case he considered that this post was reserved only for SEBC candidate then he should have raised an objection then and there rather than to take a chance for his selection by appearing in the interview. It is a case where the petitioner has first taken a

chance for his selection and when he was not placed at No.1 in the merit list, he is now making all these grievances. Otherwise also, it is always open to the candidates of the reserved category go and apply against general quota post also.

#. The petitioner has also not mentioned what happened to the first advertisement. It is not the case of the petitioner that the first advertisement has been withdrawn. In the absence of these facts, it is to be taken that the first advertisement remained in force and in pursuance thereof, the Society would have made recruitment also of the reserved category candidate. The petitioner though had applied in response to the first advertisement, but looking to the fact that that post was reserved for SC / ST/ SEBC, he though of withdrawing his right of consideration against that post and requested the Society to treat his application against the second advertisement. This goes to show that the petitioner has given up his claim against the post which has been advertised in the first advertisement. This position has to be cleared by the petitioner and when the petitioner has not made this position clear, it has to be taken that the first advertisement is not withdrawn and in pursuance of that advertisement, selection would have been made of the reserved category candidate, may be of SC/ ST. This matter may also be examined from another aspect. The petitioner is knowing weakness that against this first advertisement SC/ ST candidates are also likely to be selected, that is to say, the post was not reserved only for SEBC and as such, he would have thought of to take a chance against second advertisement.

#. Taking into consideration the totality of the facts of the case, this petition fails and the same is dismissed. Rule discharged. Interim relief, if any, earlier granted stands vacated. No order as to costs.

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(sunil)